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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN FRANCISCO DIVISION**

11 CARL ALEXANDER WESCOTT,

12 Plaintiff,

13 v.

14 MONETTE STEPHENS and MICHELLE
HARRIS,

15 Defendants.
16

Case No.: 3:17-cv-05837-SK

**DEFENDANT MICHELLE HARRIS'
NOTICE OF MOTION AND MOTION
TO DISMISS THE COMPLAINT
PURSUANT TO FRCP RULE 12(B)(6)
FOR FAILURE TO STATE A CLAIM
AND SPECIAL MOTION TO STRIKE
FIRST AMENDED COMPLAINT
PURSUANT TO CALIFORNIA CODE
OF CIVIL PROCEDURE § 425.16**

Date: March 26, 2018
Time: 9:30 a.m.
Courtroom: A, 15th Floor
Judge: Magistrate Judge Sallie Kim

21
22 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

23 NOTICE IS HEREBY GIVEN that on the above date, time and location, Defendant Michelle Harris
24 ("Harris") will move for an order dismissing Plaintiff Carl Wescott's ("Plaintiff") Complaint pursuant to
25 Rule 12(b)(6) of the Federal Rules of Civil Procedure ("FRCP"), for failure to state a claim upon which
26 relief can be granted. Harris' motion to dismiss is based on the following grounds:

27 (1) Plaintiff's claims for breach of contract and legal malpractice should be dismissed
28

1 because there was no duty owed to Plaintiff by Harris; no attorney-client relationship existed between
 2 Plaintiff and Harris to confer such a duty;

3 (2) Plaintiff's claims for breach of contract, fraud, and legal malpractice are untimely and,
 4 therefore, barred by the applicable statutes of limitations;

5 (3) Plaintiff's claims for an accounting, violations under FDCPA, fraud, retaliation under
 6 FIRREA, and conversion against Harris are barred as a matter of law by the *Noerr-Pennington* doctrine,
 7 applicable to any federal statute that might potentially undermine the rights protected by the Petition
 8 Clause of the First Amendment;

9 (4) Plaintiff's claims for relief against Harris are barred as a matter of law by the Civil Code
 10 § 47 litigation privilege which broadly protects any communication or conduct made during or in relation
 11 to any official proceeding;

12 (4) Plaintiff's claims for relief against Harris are barred as a matter of law by the Civil Code
 13 § 47 litigation privilege which broadly protects any communication or conduct made during or in relation
 14 to any official proceeding;

15 (5) Plaintiff's claims for relief against Harris under FDCPA are not sustainable because Harris is
 16 not a debt collector under the statute; and

17 (6) Plaintiff's claims for relief against Harris under FIRREA are barred as a matter of law because
 18 Plaintiff's failure to exhaust all of his administrative remedies deprives the Court of subject matter
 19 jurisdiction.

20 Harris will also move the Court for an order striking the Complaint on the grounds that it is a
 21 "SLAPP suit" under California Code of Civil Procedure § 425.16, because it arises from Harris'
 22 litigation conduct which is absolutely protected by the Section 47(b) litigation privilege. Section 425.16
 23 presumptively applies to this case because it arises from Harris' representation of her client in an
 24 underlying action, and under Section 425.16(b), Plaintiff cannot meet his burden of proof of establishing
 25 that Plaintiff has a probability of prevailing on the merits. Accordingly, the Complaint is subject to
 26 dismissal and Harris should be awarded their attorneys' fees and costs incurred in bringing this Anti-
 27 SLAPP Motion pursuant to California Code of Civil Procedure § 425.16(c).

1 It is clear from the face of the Complaint, the nature of the claims against Harris and the
2 applicable legal defenses that the Complaint cannot be saved by any further amendment, and dismissal
3 without leave to amend is appropriate.

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5 This motion is further based on this Notice, the Memorandum of Points and Authorities, the
6 Declaration of Michelle Harris and exhibits attached thereto, the Request for Judicial Notice and exhibits
7 attached thereto, and on such other oral and documentary evidence as may be presented at the hearing of this
8 matter.

9 Dated: January 31, 2018

10 MURPHY, PEARSON, BRADLEY & FEENEY

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12 By 

13 Arthur J. Harris
14 Attorneys for Defendant
MICHELLE L. HARRIS

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CERTIFICATE OF SERVICE

I, Maria Diazgranados, declare:

I am a citizen of the United States, am over the age of eighteen years, and am not a party to or interested in the within entitled cause. My business address is 88 Kearny Street, 10th Floor, San Francisco, California 94108.

On January 31, 2018, I served the following document(s) on the parties in the within action:

DEFENDANT MICHELLE HARRIS' NOTICE OF MOTION AND MOTION TO DISMISS THE COMPLAINT PURSUANT TO FRCP RULE 12(B)(6) FOR FAILURE TO STATE A CLAIM AND SPECIAL MOTION TO STRIKE FIRST AMENDED COMPLAINT PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE § 425.16

x

VIA MAIL: I am familiar with the business practice for collection and processing of mail. The above-described document(s) will be enclosed in a sealed envelope, with first class postage thereon fully prepaid, and deposited with the United States Postal Service at San Francisco, California on this date, addressed as listed below.

Attorney For Plaintiff in Propria Persona

Carl Alexander Wescott
P.O. Box 190875
San Francisco, CA
Phone: (415) 335-5000

I declare under penalty of perjury under the laws of the State of California that the foregoing is a true and correct statement and that this Certificate was executed on January 31, 2018.

By


Maria Diazgranados